



# House of Representatives

General Assembly

**File No. 468**

February Session, 2000

Substitute House Bill No. 5780

*House of Representatives, April 6, 2000*

The Committee on Judiciary reported through REP. LAWLOR of the 99<sup>th</sup> Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***An Act Concerning Execution Upon Funds Which Are Exempt From Attachment.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Section 52-279 of the general statutes is repealed and the  
2       following is substituted in lieu thereof:

3       Attachments may be granted upon all complaints containing a  
4       money demand against the estate of the defendant, both real and  
5       personal. No attachment shall be made in any action for slander, libel  
6       or invasion of privacy except upon order of the court to which the writ  
7       is made returnable. No attachment shall be made against the real or  
8       personal property of any municipal official in any action against the  
9       municipality or its officials acting within the scope of their authority  
10      except upon order of the court to which the writ is returnable. No  
11      attachment shall be made against the real or personal property of a  
12      member of the state or any municipal police force in an action  
13      involving [his] such member's conduct as a [policeman] police officer

14 except (1) when such [policeman] police officer has been dismissed  
15 from the police force of which [he] such officer was a member at the  
16 time of the incident which gave rise to the action, or (2) upon order of  
17 the court to which the writ is returnable. No attachment shall be made  
18 against the real or personal property of any member, teacher or  
19 employee, as defined by section 10-235, of any board of education, the  
20 Board of Governors of Higher Education or governing board of any  
21 state institution of higher education, in any action against any board or  
22 commission as defined by said section or against any such member,  
23 teacher or employee involving [his] such member's, teacher's or  
24 employee's conduct as such member, teacher or employee, or against  
25 any member of any other appointed or elected municipal board or  
26 commission in any action against such board or commission or against  
27 such member involving [his] such member's conduct as such member,  
28 except upon order of the court to which the writ is returnable. No  
29 attachment shall be made against the real or personal property of any  
30 Connecticut canine control officer or regional Connecticut canine  
31 control officer, appointed under the provisions of section 22-328, in  
32 any action against any such officer involving [his] such officer's  
33 conduct as such officer except upon order of the court to which the  
34 writ is returnable. No attachment shall be made against any property  
35 exempt from attachment under any other provision of state or federal  
36 law.

37 Sec. 2. Subsection (a) of section 52-351b of the general statutes is  
38 repealed and the following is substituted in lieu thereof:

39 (a) A judgment creditor may obtain discovery from the judgment  
40 debtor, or from any third person [he] such judgment creditor  
41 reasonably believes, in good faith, may have assets of the judgment  
42 debtor, or from any financial institution to the extent provided by this  
43 section, of any matters relevant to satisfaction of the money judgment.  
44 The judgment creditor shall commence any discovery proceeding by  
45 serving an initial set of interrogatories, in a prescribed form containing

46 such questions as to the assets and employment of the judgment  
47 debtor as may be approved by the judges of the Superior Court or their  
48 designee, on the person from whom discovery is sought. Service of an  
49 initial set of interrogatories relevant to obtaining satisfaction of a  
50 money judgment of a small claims session of the Superior Court may  
51 be made, upon request of the judgment creditor, by the clerk of the  
52 court sending such interrogatories by certified mail, return receipt  
53 requested, to the person from whom discovery is sought, provided the  
54 judgment creditor pays to such clerk a fee of five dollars for each  
55 mailing requested. Questions contained in the interrogatory form shall  
56 be in clear and simple language and shall be placed on the page in  
57 such manner as to leave space under each question for the person  
58 served to insert [his] such person's answer. Such person shall answer  
59 the interrogatories and return them to the judgment creditor within  
60 thirty days of the date of service. Interrogatories served on a judgment  
61 debtor shall be signed by such debtor under penalty of false statement.  
62 With respect to assets, the person served is required to reveal  
63 information concerning the amount, nature and location of the  
64 judgment debtor's nonexempt assets up to an amount clearly sufficient  
65 in value to ensure full satisfaction of the judgment with interest and  
66 costs, provided disclosure shall be first required as to assets subject to  
67 levy or foreclosure within the state. If interrogatories are served on a  
68 financial institution, the financial institution shall disclose only  
69 whether it holds funds of the judgment debtor on account, [and] the  
70 balance of such funds [,] up to the amount necessary to satisfy the  
71 judgment and whether the account contains exempt funds.

72 Sec. 3. Section 52-352a of the general statutes is repealed and the  
73 following is substituted in lieu thereof:

74 For the purposes of this [section and sections 52-352b and 52-353]  
75 chapter, the following terms shall have the following meanings:

76 (a) "Value" means fair market value of the exemptioner's equity or

77 unencumbered interest in the property;

78 (b) "Necessary" means reasonably required to meet the needs of the  
79 exemptioner and his or her dependents including any special needs by  
80 reason of health or physical infirmity;

81 (c) "Exempt" means, unless otherwise specified, not subject to any  
82 form of process or court order for the purpose of debt collection;

83 (d) "Exemptioner" means the natural person entitled to an  
84 exemption under this section or section 52-352b;

85 (e) "Homestead" means owner-occupied real property or mobile  
86 manufactured home, as defined in subdivision (1) of section 21-64,  
87 used as a primary residence.

88 Sec. 4. Section 52-367b of the general statutes is repealed and the  
89 following is substituted in lieu thereof:

90 (a) Execution may be granted pursuant to this section against any  
91 debts due from any banking institution to a judgment debtor who is a  
92 natural person, except to the extent such debts are protected from  
93 execution by sections 52-352a, as amended by this act, 52-352b, 52-352c,  
94 of the general statutes revised to 1983, 52-354 of the general statutes  
95 revised to 1983, 52-361 of the general statutes revised to 1983 and  
96 section 52-361a, as well as any other laws or regulations of this state or  
97 of the United States which exempt such debts from execution.

98 (b) If execution is desired against any such debt, the plaintiff  
99 requesting the execution shall notify the clerk of the court. On  
100 application of a judgment creditor or the judgment creditor's attorney,  
101 stating that a judgment remains unsatisfied and the amount due  
102 thereon, and subject to the expiration of any stay of enforcement and  
103 expiration of any right of appeal, the clerk of the court in which the  
104 money judgment was rendered shall issue an execution pursuant to  
105 this section against the nonexempt debts due from a banking

106 institution. In the case of a consumer judgment, the application shall  
107 indicate whether, pursuant to an instalment payment order under  
108 subsection (b) of section 52-356d, the court has entered a stay of  
109 execution and, if such a stay was entered, shall contain a statement of  
110 the judgment creditor or the judgment creditor's attorney as to the  
111 debtor's default on payments. The request for execution shall be  
112 accompanied by an affidavit signed by the judgment creditor or the  
113 judgment creditor's attorney attesting that the judgment creditor has  
114 no knowledge or reason to believe that any funds contained in the  
115 account are exempt. In a IV-D case, the request for execution shall be  
116 accompanied by an affidavit signed by the levying officer attesting to  
117 an overdue support amount of five hundred dollars or more which  
118 accrued after the entry of an initial family support judgment. If the  
119 papers are in order, the clerk shall issue such execution containing a  
120 direction that the officer serving the same shall, within seven days  
121 from the receipt by the officer of such execution, make demand (1)  
122 upon the main office of any banking institution having its main office  
123 within the county of such officer, or (2) if such main office is not within  
124 such officer's county and such banking institution has one or more  
125 branch offices within such county, upon an employee of such a branch  
126 office, such employee and branch office having been designated by the  
127 banking institution in accordance with regulations adopted by the  
128 Commissioner of Banking in accordance with chapter 54, for payment  
129 of any such nonexempt debt due to the judgment debtor and, after  
130 having made such demand, shall serve a true and attested copy of the  
131 execution, together with the affidavit, [and] exemption claim form and  
132 notice prescribed by subsection [(k)] (m) of this section, with [his] the  
133 officer's doings endorsed thereon, with the banking institution officer  
134 upon whom such demand is made. The execution, affidavit and  
135 exemption claim form shall be accompanied by a notice in clear and  
136 simple language of judgment debtor rights, including a statement of  
137 the right of the judgment debtor to request an instalment payment  
138 order staying execution pursuant to section 52-356d and a statement

139 that, pursuant to section 52-212, a judgment debtor may, for reasonable  
140 cause, move that the judgment be set aside within four months of  
141 rendition.

142 (c) If any such banking institution upon which such execution is  
143 served and upon which such demand is made is indebted to the  
144 judgment debtor, it shall verify that funds deposited in the debtor's  
145 account are nonexempt. If any of the funds deposited in the debtor's  
146 account are exempt under any provision of state or federal law, the  
147 banking institution shall forthwith return the execution to the levying  
148 officer unsatisfied; and such return of the execution to the levying  
149 officer by the banking institution shall be prima facie evidence that  
150 such funds are exempt.

151 ~~[(c)]~~ (d) If any such banking institution upon which such execution  
152 is served and upon which such demand is made is indebted to the  
153 judgment debtor and has verified that none of the funds deposited in  
154 the debtor's account are exempt, it shall remove from the debtor's  
155 account the amount of such ~~[indebtedness]~~ nonexempt funds not  
156 exceeding the amount due on such execution before its midnight  
157 deadline, as defined by section 42a-4-104.

158 ~~[(d)]~~ (e) Upon receipt of the execution, ~~[and]~~ exemption claim form  
159 and notice of rights from the serving officer and upon verification that  
160 the funds deposited in the debtor's account are nonexempt, the  
161 banking institution shall forthwith mail copies thereof, postage  
162 prepaid, to the judgment debtor at ~~[his]~~ the last known address of the  
163 judgment debtor with respect to the affected accounts on the records of  
164 the banking institution. No notice shall be required if the execution is  
165 returned to the levying officer unsatisfied. The institution shall hold  
166 the amount removed from the debtor's account pursuant to subsection  
167 ~~[(c)]~~ (d) of this section for fifteen days from the date of the mailing to  
168 the judgment debtor and during such period shall not pay the serving  
169 officer.

170       [(e)] (f) To prevent the banking institution from paying the serving  
171 officer, as provided in subsection [(h)] (i) of this section, the judgment  
172 debtor shall give notice of a claim of exemption by delivering to the  
173 banking institution, by mail or other means, the exemption claim form  
174 or other written notice that an exemption is being claimed. The  
175 banking institution may designate an address to which the notice of a  
176 claim of exemption shall be delivered. Upon receipt of such notice, the  
177 banking institution shall, within two business days, send a copy of  
178 such notice to the clerk of the court which issued the execution.

179       [(f)] (g) Upon receipt of an exemption claim form, the clerk of the  
180 court shall enter the appearance of the judgment debtor with the  
181 address set forth in the exemption claim form. The clerk shall  
182 forthwith send file-stamped copies of the form to the judgment  
183 creditor and judgment debtor with a notice stating that the disputed  
184 assets are being held for forty-five days from the date the exemption  
185 claim form was received by the banking institution or until a court  
186 order is entered regarding the disposition of the funds, whichever  
187 occurs earlier, and the clerk shall automatically schedule the matter for  
188 a short calendar hearing on the nonarguable calendar. The claim of  
189 exemption filed by [such] the judgment debtor shall be prima facie  
190 evidence at such hearing of the existence of the exemption.

191       [(g)] (h) If an exemption claim is made pursuant to subsection [(e)]  
192 (f) of this section, the banking institution shall continue to hold the  
193 amount removed from the judgment debtor's account for forty-five  
194 days or until a court order is received regarding disposition of the  
195 funds, whichever occurs earlier. If no order is received within forty-  
196 five days of the date the banking institution sends a copy of the  
197 exemption claim form or notice of exemption to the clerk of the court,  
198 the banking institution shall return the funds to the judgment debtor's  
199 account.

200       [(h)] (i) If no claim of exemption is received by the banking

201 institution within fifteen days of the mailing to the judgment debtor of  
202 the execution and exemption claim form pursuant to subsection [(d)]  
203 (e) of this section, the banking institution shall, upon demand,  
204 forthwith pay the serving officer the amount removed from the  
205 judgment debtor's account, and the serving officer shall thereupon pay  
206 such sum, less [his] such officer's fees, to the judgment creditor, except  
207 to the extent otherwise ordered by a court. Failure of the judgment  
208 debtor to give notice of a claim of exemption to the banking institution  
209 within fifteen days of the date of the mailing shall not preclude the  
210 judgment debtor from recovering exempt funds from the judgment  
211 creditor.

212 (j) If, pursuant to subsection (c) of this subsection, the banking  
213 institution returns the execution to the levying officer unsatisfied  
214 because funds deposited in the debtor's account are exempt, the  
215 judgment creditor may, on an ex parte basis, present evidence to a  
216 judge of the Superior Court that such debtor's account contains funds  
217 which are not exempt from execution, notwithstanding the return of  
218 the execution to the levying officer by the banking institution, which  
219 shall be prima facie evidence that such funds are exempt. If such judge  
220 finds probable cause to believe that such debtor's account contains  
221 funds which are not exempt from execution, such judge shall issue an  
222 execution against the nonexempt debts due from such banking  
223 institution. The judgment creditor may cause the execution to be  
224 served pursuant to subsection (b) of this section and the banking  
225 institution shall proceed pursuant to subsections (d) to (i), inclusive, of  
226 this section as to such nonexempt funds.

227 [(i)] (k) The court, after a hearing conducted pursuant to subsection  
228 [(f)] (g) of this section, shall enter an order determining the issues  
229 raised by the claim of exemption. The clerk of the court shall forthwith  
230 send a copy of such order to the banking institution. Such order shall  
231 be deemed to be a final judgment for the purposes of appeal. No  
232 appeal shall be taken except within seven days of the rendering of the



233 order. The order of the court may be implemented during such seven-  
234 day period, unless stayed by the court.

235 [(j)] (l) If both exempt and nonexempt moneys have been deposited  
236 into an account, for the purposes of determining which moneys are  
237 exempt under this section, the moneys most recently deposited as of  
238 the time the execution is levied shall be deemed to be the moneys  
239 remaining in the account.

240 [(k)] (m) The exemption claim form, execution and clerk's notice  
241 regarding the filing of a claim of exemption shall be in such form as  
242 prescribed by the judges of the Superior Court or their designee. The  
243 exemption claim form shall be dated and include a checklist and  
244 description of the most common exemptions, instructions on the  
245 manner of claiming the exemptions, and a space for the judgment  
246 debtor to certify those exemptions claimed under penalty of false  
247 statement.

248 [(l)] (n) If records or testimony are subpoenaed from a banking  
249 institution in connection with a hearing conducted pursuant to  
250 subsection [(f)] (g) of this section, the reasonable costs and expenses of  
251 the banking institution in complying therewith shall be recoverable by  
252 it from the party requiring such records or testimony, provided, the  
253 banking institution shall be under no obligation to attempt to obtain  
254 records or documentation relating to the account executed against  
255 which are held by any other banking institution. The records of a  
256 banking institution as to the dates and amounts of deposits into an  
257 account in such institution shall, if certified as true and accurate by an  
258 officer of the banking institution, be admissible as evidence without  
259 the presence of the officer in any hearing conducted pursuant to  
260 subsection [(f)] (g) of this section to determine the legitimacy of a claim  
261 of exemption made under this section.

262 [(m)] (o) If there are moneys to be removed from the debtor's  
263 account, prior to the removal of such moneys pursuant to subsection

264 [(c)] (d) of this section the banking institution shall receive from the  
265 serving officer as representative of the judgment creditor a fee of eight  
266 dollars for its costs in complying with the provisions of this section  
267 which fee may be recoverable by the creditor as a taxable cost of the  
268 action.

269 [(n)] (p) If the banking institution fails or refuses to pay over to the  
270 serving officer the amount of such debt, not exceeding the amount due  
271 on such execution, such banking institution shall be liable in an action  
272 therefor to the judgment creditor named in such execution for the  
273 amount of nonexempt moneys which it failed or refused to pay over,  
274 and the amount so recovered by such judgment creditor shall be  
275 applied toward the payment of the amount due on such execution.  
276 Thereupon the rights of the banking institution shall be subrogated to  
277 the rights of the judgment creditor. If such banking institution pays  
278 exempt moneys from the account of the judgment debtor over to the  
279 serving officer contrary to the provisions of this section, such banking  
280 institution shall be liable in an action therefor to the judgment debtor  
281 for any exempt moneys so paid. Thereupon the rights of the banking  
282 institution shall be subrogated to the rights of the judgment debtor.

283 [(o)] (q) Except as provided in subsection [(n)] (p) of this section, no  
284 banking institution or any officer, director or employee thereof shall be  
285 liable to any person with respect to anything done or omitted in good  
286 faith in complying with the provisions of this section.

287 [(p)] (r) Nothing in this section shall in any way restrict the rights  
288 and remedies otherwise available to a judgment debtor at law or in  
289 equity.

290 [(q)] (s) Nothing in this section shall in any way affect any rights of  
291 the banking institution with respect to uncollected funds credited to  
292 the account of the judgment debtor, which rights shall be superior to  
293 those of the judgment creditor.

294        [(r)] (t) For purposes of this subsection, "exempt" shall have the  
295 same meaning as in subsection (c) of section 52-352a, as amended by  
296 this act. Funds deposited in an account that has been established for  
297 the express purpose of receiving electronic direct deposits of public  
298 assistance payments from the Department of Social Services shall be  
299 exempt.

**JUD   Committee Vote:**   Yea   40   Nay   0   JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Affected Agencies:** Judicial Department, Probate Court (Judicial Department), Department of Banking

**Municipal Impact:** None

**OLR Bill Analysis**

sHB 5780

***AN ACT CONCERNING EXECUTION UPON FUNDS WHICH ARE EXEMPT FROM ATTACHMENT.*****SUMMARY:**

This bill expands the procedures that creditors and financial institutions must follow before they can take money from a debtor's account to satisfy a court judgment. It requires financial institutions (banks, savings and loans, and credit unions) to verify that no exempt funds are in an account before honoring a judgment creditor's attachment or execution. It prohibits them from taking any funds from accounts containing any exempt funds unless a court orders it. (Exempt funds include public assistance, social security, disability, unemployment, retirement, and veterans' benefits; and alimony, child support, and some other insurance payments.)

The bill also adds new notice requirements and permits judges to decide some exemption claims *ex parte* (with only one party present) and others on written submissions. It specifies that debtors who miss the 15-day time limit for claiming exemptions may still seek to have their creditors return exempt funds that the financial institution paid over.

It also specifies that, in addition to their existing exempt special protections against property attachments, municipal officials, police officers, school boards, school employees, and canine control officers are entitled to all other applicable state and federal protections.

Finally, one of the bill's provisions makes the existing exempt property law's special definitions of "value," "exempt," "exemptioner," and "homestead" applicable to all post-judgment procedure statutes. In some cases, this makes the meaning of those laws unclear (see COMMENT).

EFFECTIVE DATE: October 1, 2000

## **BANK AND CREDITOR OBLIGATIONS**

### ***Interrogatory Responses***

By law, exempt funds cannot be attached or seized to satisfy a money judgment. Under the bill, when a financial institution responds to a judgment creditor's interrogatory seeking information about funds in a debtor's account, it must specify whether the account contains exempt funds. Currently, it need only disclose whether the debtor has an account and the balance in it, up to the amount needed to satisfy the judgment.

### ***Execution Applications***

The bill requires judgment creditors to include in their court applications to execute upon financial institution accounts how much of the judgment is still owed. If the debt is a consumer judgment (a money judgment against a natural person for up to \$5,000), the application must also specify whether the court ordered it to be paid in installments, and if so, a statement of the debtor's default on the payments. The creditor or its attorney must submit with its application an affidavit (sworn statement) attesting that he has no knowledge or reason to believe that any funds in the account are exempt.

Currently, creditors file a request for execution with the court clerk on a court-approved form.

### ***Bank Verification and Notice Obligations***

The bill requires financial institutions to verify that no funds in accounts specified in execution orders are exempt. If it determines that any are, it must return the execution unsatisfied. This action, under the bill, creates a legal presumption that all of the funds in the account are exempt, which the debtor must get a court order to overturn. There is no existing requirement that financial institutions verify the nonexempt status of an account holder's funds.

If an institution determines that the account contains only nonexempt

funds, it must remove funds from the account and hold them for 15 days from the date it mails the account holder a copy of the execution, affidavit, an exemption form, and notice of his rights. (Current law requires the institution to remove and hold these funds whether or not the account involves exempt funds.) The bill requires the notice to contain a clear and simple description of the debtor's rights, including his rights to request a court-ordered payment plan and file a motion to have a judgment overturned if he has a reasonable basis to do so.

## **COURT HEARINGS**

### ***Ex Parte Hearings***

Under the bill, when a financial institution returns an execution unsatisfied, the creditor may present evidence to a judge, outside the presence of the debtor, that the account contains funds that are not exempt. If the judge finds probable cause to believe the creditor's argument is valid, he must issue an execution order against the nonexempt funds. (The bank holding period, debtor notice, and exemption claim procedures, described above, also apply to these execution orders.)

### ***Exemption Hearings***

By law, when a debtor notifies the financial institution within the 15-day period that it claims an exemption, the institution cannot pay funds over to the creditor unless, within 45 days, a court orders it to do so. When a court is notified that an exemption has been claimed, its clerk must set the matter down for a hearing. Currently, the parties must personally appear at the hearing. Under the bill, the clerk must schedule it on the non-arguable calendar, meaning that the court can decide the issues based on the parties' written submissions.

## **COMMENT**

### ***Overbroad Definitions of "Necessary" and "Value"***

The bill makes special definitions of "necessary" and "value" applicable to all post-judgment procedure statutes, not just those relating to exempt property. But these words appear a number of times

in these statutes in contexts where the special definitions appear to be inappropriate.

For example, the bill defines “necessary” as “reasonably required to meet the needs of the exemptioner and his or her dependents including any special needs by reason of health or physical infirmity.” Current law requires the Child Support Enforcement Registry to notify those seeking to register support orders issued by other states of “necessary” additions and corrections that they must make to those documents to satisfy our formal registration rules (CGS §52-362f(d)). It appears that the bill’s definition of “necessary” does not fit this context.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 40      Nay 0